

1 KAZEROUNI LAW GROUP, APC**2 Abbas Kazerounian, Esq. (SBN: 249203)****3 ak@kazlg.com****4 Jason A. Ibey, Esq. (SBN: 284607)****5 Jason@kazlg.com****6 245 Fischer Avenue, Suite D1****7 Costa Mesa, CA 92626****8 Telephone: (800) 400-6808****9 Facsimile: (800) 520-5523****10 *Attorneys for Plaintiff,*****11 Rafael David Sherman****12 UNITED STATES DISTRICT COURT**
13 SOUTHERN DISTRICT OF CALIFORNIA**14**
15 RAFAEL DAVID SHERMAN,
16 Individually and On Behalf of All
17 Others Similarly Situated,**18 Plaintiff,****19 v.****20 RMH, LLC; and RANCHO**
21 CHRYSLER JEEP DODGE a/k/a
22 RANCHO AUTO GROUP a/k/a
23 RANCHO CHRYSLER a/k/a
24 RANCHO JEEP,**25 Defendants.****Case No.: '13CV1986 WQHWMC****CLASS ACTION****Complaint for Damages and**
Injunctive Relief Pursuant To The
Telephone Consumer Protection
Act, 47 U.S.C § 227 et seq.**Jury Trial Demanded**

INTRODUCTION

1. RAFAEL DAVID SHERMAN (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of RMH, LLC (“RMH”) and RANCHO CHRYSLER JEEP DODGE a/k/a RANCHO AUTO GROUP a/k/a RANCHO CHRYSLER a/k/a RANCHO JEEP (“Rancho Dodge”) (collectively the “Defendants”), in negligently and/or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.
2. The actions alleged herein to have been undertaken by the Defendants were undertaken by each defendant individually, were actions that each defendant caused to occur, were actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions each defendant assisted, participated in, or otherwise encouraged, and are actions for which each defendant is liable. Each defendant aided and abetted the actions of the defendants set forth below, in that each defendant had knowledge of those actions, provided assistance and benefited from those actions, in whole or in part. Each of the defendants was the agent of each of the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of other defendants.
3. The TCPA was designed to prevent calls like the ones described within this Complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example,

computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S.Ct. 740, 744 (2012).

4. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

5. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also, Mims*, 132 S. Ct. at 744.
6. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an

1 automated call to a cell phone adds expense to
2 annoyance.

3 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

- 4 7. The Ninth Circuit recently affirmed certification of a TCPA class action
5 remarkably similar to this one in *Meyer v. Portfolio Recovery Associates,*
6 *LLC*, __ F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

7 JURISDICTION AND VENUE

- 8 8. This Court has federal question jurisdiction because this case arises out of
9 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
10 132 S. Ct. 740 (2012).

- 11 9. Venue is proper in the United States District Court for the Southern District
12 of California pursuant to 18 U.S.C. § 1391(b) because Plaintiff resides in the
13 State of California, the harm to Plaintiff occurred in the State of California
14 and within the County of San Diego, and Defendants are subject to personal
15 jurisdiction in the County of San Diego and within this judicial district
16 because it conducts business there.

17 PARTIES

- 18 10. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
19 the State of California. Plaintiff is, and at all times mentioned herein was, a
20 “person” as defined by 47 U.S.C. § 153 (39).
- 21 11. Plaintiff is informed and believes, and thereon alleges, that RHM is, and at
22 all times mentioned herein was, a California limited liability company whose
23 primary corporate address is in California at 8010 Balboa Avenue, San
24 Diego, California 91203.
- 25 12. Rancho Dodge is, and at all times mentioned herein was, a California limited
26 liability company and is a “person,” as defined by 47 U.S.C. § 153 (39).
- 27 13. Plaintiff is informed, believes and thereon alleges that RMH is the owner
28 and/or parent company of Defendant Rancho Dodge.

1 14. Plaintiff alleges that at all times relevant herein Defendants conducted
2 business in the State of California and in the County of San Diego, and
3 within this judicial district.

4 **FACTUAL ALLEGATIONS**

5 15. At all times relevant, Plaintiff was a citizen of the State of California.
6 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
7 47 U.S.C. § 153 (39).

8 16. Defendants are, and at all times mentioned herein were, a corporation and a
9 “person,” as defined by 47 U.S.C. § 153 (39).

10 17. At all times relevant Defendants conducted business in the State of
11 California and in the County of San Diego, and within this judicial district.

12 18. Plaintiff is informed, believes and thereon alleges that Defendant RMH is
13 the owner and/or parent company of Rancho Dodge, who placed, or caused
14 to be placed, the unlawful call to Plaintiff’s cellular telephone.

15 19. In an effort to promote its automobiles and automotive products to
16 consumers, Rancho Dodge, a retail outlet for automobiles and service center,
17 either itself, or through a third party call center, engaged in an a marketing
18 campaign involving the transmission of prerecorded voice messages to the
19 cellular telephones of consumers throughout the nation.

20 20. In late June of 2013, Defendants contacted Plaintiff on Plaintiff’s cellular
21 telephone in an attempt to sell him good or services via an “automatic
22 telephone dialing system,” (“ATDS”) as defined by 47 U.S.C. § 227(a)(1)
23 using an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §
24 227(b)(1)(A).

25 21. This ATDS has the capacity to store or produce telephone numbers to be
26 called, using a random or sequential number generator.

27 22. Plaintiff is informed and believes, and thereon alleges that Rancho
28 Dodge placed, or caused the call in question to be placed, at the direction

of its owner and/or parent company, RMH.

23. Plaintiff is informed and believes, and thereon alleges that Defendants' purpose in placing such prerecorded call was to solicit Plaintiff's business regarding a newer vehicle and/or vehicle parts or vehicle services.

24. The telephone number Defendants called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

25. Plaintiff's cellular telephone number called by Defendants ended in "2179."

26. This telephone call constituted a call that was not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

27. At no time did Plaintiff give Defendants express consent to use an automatic telephone dialing system to leave a prerecorded or artificial voice message via and ATDS on Plaintiff's cellular telephone. Thus, Plaintiff did not provide Defendants or their agent prior express consent to receive autodialed calls, including unsolicited prerecorded calls, to Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

28. This automated and/or prerecorded telephone call by Defendants, or their agent, violated 47 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated (the "Class").

30. Plaintiff represents and is a members of the Class, which includes:

All persons within the United States who received any telephone call/s from Defendants or their agent/s and/or employee/s to said person's cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice within the four years prior to the filling of this Complaint.

31. Defendants and their employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the members of the Class number in the several thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.
32. Plaintiff and members of the Class were harmed by the acts of Defendants in at least the following ways: Defendants, either directly or through their agents, illegally contacted Plaintiff and the members of the Class via their cellular telephones thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, by having to retrieve or administer messages left by Defendants during those illegal calls, and invading the privacy of said Plaintiff and the Class members. Plaintiff and the class members were damaged thereby.
33. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand or modify the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.
34. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendants' records or Defendants' agents' records.
35. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual members of the Class, including but not limited to the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendants made any call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service.
- b. Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violations; and
- c. Whether Defendants should be enjoined from engaging in such conduct in the future.

36. As a person who received at least one call using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in the Plaintiff has no interests antagonistic to any member of the Class.

37. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, the Plaintiff and members of the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct. Because of the size of the individual claims of members of the Class, few, if any, members of the Class could afford to seek legal redress for the wrongs complained of herein.

38. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

39. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendants to

1 comply with federal and California law. The interest of members of the
 2 Class in individually controlling the prosecution of separate claims against
 3 Defendants is small because the maximum statutory damages in an
 4 individual action for violation of privacy are minimal. Management of these
 5 claims is likely to present significantly fewer difficulties than those
 6 presented in many class claims.

7 40. Defendants have acted on grounds generally applicable to the Class, thereby
 8 making appropriate final injunctive relief and corresponding declaratory
 9 relief with respect to the Class as a whole.

10 **FIRST CAUSE OF ACTION**

11 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

12 **47 U.S.C. § 227 ET SEQ.**

13 41. Plaintiff incorporates by reference all of the above paragraphs of this
 14 Complaint as though fully stated herein.

15 42. The foregoing acts and omissions of Defendants constitute numerous and
 16 multiple negligent violations of the TCPA, including but not limited to each
 17 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

18 43. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,
 19 Plaintiff and the Class are entitled to an award of \$500.00 in statutory
 20 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

21 44. Plaintiff and the Class are also entitled to and seek injunctive relief
 22 prohibiting such conduct in the future.

23 **SECOND CAUSE OF ACTION**

24 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**

25 **TELEPHONE CONSUMER PROTECTION ACT**

26 **47 U.S.C. § 227 ET SEQ.**

27 45. Plaintiff incorporates by reference all of the above paragraphs of this
 28 Complaint as though fully stated herein.

46. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

47. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

48. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the members of the Class the following relief against Defendants:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each member of the Class \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each member of the Class \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

49. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: August 27, 2013

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.
ATTORNEY FOR PLAINTIFF

KAZEROUNI LAW GROUP, APC
245 Fischer Avenue, Suite D1
Costa Mesa, CA 92626